

NOT FOR PRINTED PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

KYLE RAY

v.

HOUSTON COUNTY, TEXAS, ET
AL.

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CASE NO. 9:18-CV-182-RC-ZJH

**ORDER REGARDING OBJECTIONS AND ACCEPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. In his Report and Recommendation (Doc. #35), Judge Hawthorn recommended granting in part and denying in part Defendants' Motion to Dismiss (Doc. #31).

The court has received and considered the Report and Recommendation of Judge Hawthorn filed pursuant to such referral, along with the record and pleadings. Plaintiff failed to file objections to the Report and Recommendation. A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in the Report, within fourteen days of being served with a copy of the Report, bars that party from entitlement to *de novo* review by the United States District Judge of the findings of fact and conclusions of law. *See Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).

However, Defendants filed objections to the Magistrate Judge's Report and Recommendation. (Doc. #36). This requires *de novo* review of Defendants' objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b); 28 U.S.C. § 636.

Defendants contend that the claims against Darrel Bobbitt in his official capacity should be dismissed because he is no longer the Sherriff of Houston County. After careful consideration, the court concludes Defendants' objections are meritorious and should be sustained.

Having conducted a *de novo* review of Defendants' objections and considering the Magistrate Judge's recommendations, the court orders as follows. It is **ORDERED** that Defendants' objections (Doc. #36) are **SUSTAINED**. The findings of fact and conclusions of law of the Magistrate Judge are otherwise correct and the Report (Doc. #35) of the Magistrate Judge is **ACCEPTED** except with respect to the recommendation regarding Darrel Bobbitt in his official capacity.

The court further **ORDERS** that Defendants' Motion to Dismiss (Doc. #31) is **GRANTED, in part**, as to Plaintiff's claims against Sergeant Ryan Martin, Lieutenant Martha Jackson, and Sherriff Darrel Bobbitt in their individual and official capacities. Those claims are therefore **DISMISSED** with prejudice and those Defendants are **DISMISSED** from this action.

The court further **ORDERS** that Defendants' Motion to Dismiss (Doc. #31) is **DENIED, in part**, as to Plaintiff's claims against Houston County. The claims against Houston County remain pending.

So ORDERED and SIGNED, Mar 29, 2021.

A handwritten signature in black ink, appearing to read "Ron Clark", written over a horizontal line.

Ron Clark
Senior Judge